THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22611 OF 2005

Dated: 12th April, 2006.

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Between :

Jahazi Mazdoor Union (regd.) rep. by is

Vice President, having office in the premises

Of Dredging Corporation of India Limited,

Dredging House, Port Area, Visakhapatnam, A.P. … Petitioner

And

1. The Commissioner of Labour, Govt. of A.P.,

   T. Anjaiah Bhavan, RTC X Roads,

   Hyderabad, and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondents 1 to 3 in seeking to accord recognition to the 4th respondent as recognised union as arbitrary and illegal and consequently to direct the respondents 1 to 3 to conduct a secret ballot election for verification of the majority union from amongst the employees working in the 3rd respondent Corporation within a time-frame.

The facts, in brief, are as under :

The petitioner union, formed in the year 1947, claims to be a registered trade union of the Dock-yard Workers and Employees throughout India, having its head office at Mumbai and local units at all places where the third respondent – Dredging Corporation of India Limited is undertaking work, including one at Visakhapatnam.

It is stated that the fourth respondent, Non-Executive Employees Union of 3rd respondent Corporation, which was formed in the year 1991, made an application to the Commissioner of Labour seeking verification of the majority union. In pursuance thereof, the 2nd respondent – Deputy Commissioner of Labour by letter dated 23-4-2005 called upon the 4th respondent union as well as petitioner union to attend the meeting to verify the majority union through check-off system. By a subsequent letter dated 6-5-2005, the 2nd respondent had also called upon the petitioner union to produce the records and registers. In response to the same, the petitioner by letter dated 13-5-2005 while seeking further time to produce the registers, asserted that the majority union has to be verified on the basis of secret ballot system, but not through check-off system. While so, the 3rd respondent Corporation addressed a letter dated 23-5-2005 informing the petitioner union that the 2nd respondent – Deputy Commissioner of Labour would conduct a membership verification through check-off system and called upon the petitioner to produce copies of the consent letters given by the employees for enrolment in the union membership. The petitioner by letter dated 11-5-2005 sought further time for producing such letters.

While the matter stood thus, by letter dated 30-8-2005 the third respondent Corporation accorded recognition to the 4th respondent union as a representative union, a copy of which was also marked to the petitioner. From the said letter, the petitioner came to know that the Commissioner of Labour vide letter dated 12-7-2005 had recommended for recognition of the 4th respondent as representative union. Immediately thereafter, the third respondent Corporation called upon the petitioner to vacate the office room provided to it within the premises of the 3rd respondent Corporation and hand it over to them. By letter dated 6-9-2005 the petitioner lodged a protest and requested the third respondent to reconsider the issue stating that the petitioner union had been in occupation of the said room for over 25 years and the attempt to get it vacated unilaterally was illegal and unwarranted. In pursuance thereof, the 3rd respondent Corporation by letter dated 19-9-2005 informed the petitioner that the room in occupation of the petitioner was required to be given to the 4th respondent which was recognised as representative union.

Aggrieved by the said action of the respondents, the present writ petition is filed.

The contention of the petitioner is that the action of the respondents in adopting the verification of the majority union through check-off system, without considering the representation of the petitioner to conduct secret ballot, is arbitrary and illegal. The petitioner pleads that in view of the order of this Court in W.P.No.8977 of 2001 holding that the secret ballot system for electing the representative union is the best and fair method, the respondents ought not to have resorted to the check-off system for electing the representative union. It is also contended that the action of the respondents in electing the 4th respondent union through check-off system unilaterally and behind the back of the petitioner was mala fide, illegal and contrary to the Code of Conduct established amongst the industries and trade union.

On the other hand, the case of the 4th respondent union is that as per the procedure established under the Inter-union Code of Conduct and the verification through check-off system, the petitioner union became minority union and lost recognition.

As a matter of fact, the majority of the workers gradually resigned from the petitioner union and joined the 4th respondent union and thus the 4th respondent union became majority union and has been declared as the recognised union in 2005 after the verification made by the Commissioner of Labour following the due procedure. It is further stated that the practice prevailing in the 3rd respondent Corporation for the past about 20 years for verification of membership has been through the check-off system and the petitioner union was recognised during previous years by the said process only. For the year 2005, the Commissioner of Labour recommended the management of the 3rd respondent Corporation by letter dated 12-7-2005 to recognize the 4th respondent union on the basis of the result of the verification done by the 2nd respondent through the very same process i.e., check-off system. Whereas the 4th respondent union submitted all the required records on 3-5-2005, the petitioner failed to do so in spite of repeated notices issued by the 2nd respondent. Hence, the 2nd respondent made the verification of the basis of membership registers, subscription receipts and other records through check-off system and the verification revealed that the 4th respondent union was having majority and accordingly the 1st respondent recommended to the 3rd respondent Corporation to recognize the 4th respondent as majority union.

The 2nd respondent – Deputy Commissioner of Labour filed a counter-affidavit stating that the 4th respondent union was registered in the year 1991. It is also stated that under Code of Discipline, verification of membership of union was conducted in the year 2002 through check-off system and in the said election the petitioner union was declared as recognised union for a period of 2 years. Since the period of recognition was over, the 1st respondent appointed the 2nd respondent as Verification Officer to verify the majority union in the 3rd respondent Corporation by letter dated 29-3-2005. The 1st respondent had also directed to follow check-off system as per old practice. The 2nd respondent by notice dated 23-4-2005 called upon the petitioner union as well as the 4th respondent union to produce the records and registers maintained as per the statutory provisions. Though the 4th respondent union submitted its records, the petitioner union failed to do so in spite of the second

notice. Hence, the petitioner union was eliminated from the verification process and from the subscription list and the muster roll maintained by the management, it was noted that the 4th respondent union was the majority union and accordingly the same was recommended for recognition. On the basis of the same, the 1st respondent declared the 4th respondent as the majority union following the procedure prescribed in Code of Discipline and recommendations of the evaluation and implementation committee. Hence, the writ petition is misconceived and liable to be dismissed.

I have heard the learned Counsel for both the parties and perused the material on record.

From the counter-affidavit filed by the 2nd respondent – Deputy Commissioner of Labour, it is clear that under Code of Discipline, verification of membership of union was conducted earlier in February, 2002 through check-off system in which the petitioner union got the majority and accordingly it was declared as recognised union for a period of two years. On completion of the said period in February, 2004, the 4th respondent union made a representation to the 1st respondent to conduct fresh election for determining majority as prescribed under Code of Discipline. Accordingly, the Deputy Commissioner of Labour was appointed as Verification Officer. Since large number of employees of the 3rd respondent Corporation are working in various projects all over India, the 1st respondent directed the Verification Officer to verify the majority union through check-off system as was done in the years 1986, 1991 and 2002. In pursuance thereof, the Verification Officer issued notice 22-4-2005 calling upon the unions to produce the registers and records maintained by them under the statutory provisions on 3-5-2005. Though the 4th respondent union produced its records, the petitioner union could not furnish the registers and records, but submitted a representation to extend time by 3 months. However, in terms of the Code of Discipline, a final notice was issued to produce the record on 13-5-2005. The petitioner failed to produce the records and registers, but again represented to grant one more month.

It is clear from the counter-affidavit that in check-off system for the purpose of the verification of majority union, subscriptions being deduced by the management every month from the salaries of the employees will be verified. Accordingly, the

management of the 3rd respondent Corporation was requested to furnish the list of subscriptions for the last six months i.e., from October, 2004 to March, 2005 and on verification of the same as well as the muster roll, it was noticed that 251 employees were working in the 3rd respondent Corporation and out of them, 175 were working in the Head Office at Visakhapatnam and 76 were working in Project Offices at Delhi, Calcutta and other places. Out of 251, it was found that 129 employees were paying monthly subscription of Rs.10/- to the 3rd respondent Corporation and 115 employees were paying monthly subscription to the petitioner union and 7 employees were not subscribing to any of the unions. Thus, the 4th respondent union was having majority of 14 employees as per the subscriptions paid by the employees under the check-off system. Accordingly, the 4th respondent union was recommended for recognition as majority union by the Verification Officer and on the basis of the same, the 1st respondent declared the 4th respondent union as the majority union in 3rd respondent Corporation.

Having regard to the above undisputed facts explained in the counter-affidavit of the 2nd respondent, it is clear that the verification was properly conducted through check-off system as provided under the Code of Discipline. It is not in dispute that even during the previous years, the verification was conducted only through check-off system and as a matter of fact the petitioner union was declared as the majority union in the year 2002 only through check-off system. Hence, the contention of the petitioner that the 1st respondent ought to have conducted a secret ballot election for verification of the majority union is without any substance and was rightly rejected by the respondents 1 and 2. It is also clear that the petitioner was served with notices and was afforded reasonable opportunity to produce the relevant records and registers, but it failed to do so. At any rate, since the verification was made by the 2nd respondent on the basis of the subscription list submitted by the management maintaining transparency, it cannot be said that the petitioner was prejudiced in any manner.

For the aforesaid reasons and in the absence of any material to show that the procedure adopted by the respondents 1 and 2 in conducting the verification of majority was in violation of any statutory provisions and particularly in the absence

of any allegation of mala fides, I do not find any justifiable reason to hold that the action of the respondents 1 to 3 in according recognition to the 4th respondent union is arbitrary or illegal. Hence, the petitioners cannot demand for re-verification of majority. Consequently, no Mandamus can be issued compelling the respondents to conduct a secret ballot election as sought for.

Since the 4th respondent union was declared as the majority union, the action of the 3rd respondent Corporation in taking steps to recover the possession of the office-room in occupation of the petitioner union cannot be found fault with.

The Writ Petition is devoid of any merit and misconceived, and accordingly the same is dismissed. No costs.

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G. ROHINI, J.

Dt. 12-04-2006

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